

Applicant: Mary Ellen Ortega

Agent: N/A

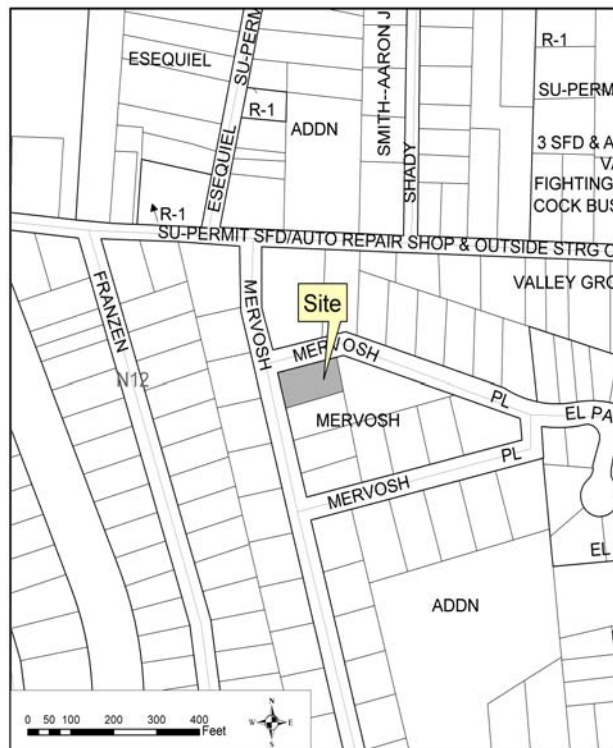
Location: 2412 Mervosh Ave. SW

Property Size: Approximately .25 acres

Existing Zone: R-1

Request: Special Use Permit for Specific Uses for an Apartment and a Single Family Dwelling

Recommendation: Denial



Summary: The applicant is requesting a Special Use Permit for Specific Uses for an Apartment and a Single Family Dwelling. The site is located in the Semi Urban Area of the Southwest area Plan and the Albuquerque Bernalillo County Comprehensive Plan. This request is the result of a zoning violation. This case was continued from the April 4, 2007 hearing in order to allow the applicant time to resolve several items related to the request.

Staff Planner: Enrico Gradi, Program Planner

Attachments:

1. Application
2. Land Use and Zoning Maps
3. Notice of Violation Letters
4. Site Plan (Commissioners only)

Bernalillo County Departments and other agencies reviewed this application from 2/27/07 to 3/12/07. Their comments were used in preparation of this report, and begin on Page 11.

AGENDA ITEM NO.: 7
County Planning Commission
January 9, 2008

CSU-70009 Mary Ellen Ortega requests approval of a Special Use Permit for Specific Uses for an Apartment and a Single Family Dwelling Unit on Lot 35, Mervosh Addition, located at 2412 Mervosh Avenue SW, zoned R-1, and containing approximately .25 acres. (N-12) (CONTINUED FROM THE APRIL 4, 2007 HEARING)

AREA CHARACTERISTICS AND ZONING HISTORY
Surrounding Zoning & Land Uses

	Zoning	Land use
Site	R-1	Single Family and Two Apartments
North	R-1	Church
South	R-1	Single Family Dwelling
East	R-1	Single Family Dwelling
West	R-1	Single Family Dwelling

BACKGROUND:

The Request

The applicant is applying for a Special Use Permit for Specific Uses for Apartments and a Single Family Dwelling in order to allow the continued use of two apartments that were first observed by a Bernalillo County zoning inspector in 1995.

According to the previous case file for (CZ-98-37), the two apartments were constructed without building permits or zoning approval. The only building permit that the Bernalillo County Building Department has on record is for a garage (BP-02350). Ultimately, the lack of any approvals for the dwellings resulted in the applicant's request for zoning approval in April of 1999. At the April 7, 1999 public hearing, the Extraterritorial Land Use Commission (ELUC) voted to recommend denial of the application of a zone change from R-1 to C-1 and to not consider a Special Use Permit for the site (CZ-98-37). There is no evidence that the applicant appealed the ELUC's decision to the Extraterritorial Land Use Authority. The applicant was required to discontinue the use of the apartments for residential uses.

In January of 2006, the applicant was cited once again for using of the apartments for residential uses. According to the Zoning Manager, letters from the Zoning Department were sent out to abate violations, however a response was not received within ample time to avoid the case being referred to Bernalillo County Metropolitan Court for the aforementioned violation. The applicant was given a continuance in this matter to May 2, 2007 to allow the owner to apply for a Special Use Permit for the subject site.

Request Justification

The applicant states that the request is justified because one of the apartments was constructed in the early 1970's and the second was apartment has yet to be completed. The applicant maintains that the County Planning Department has lost her documents however; the Bernalillo County Planning Department maintains all the information that was submitted from the previous request as well as the materials for the current request. In addition, the applicant states that a considerable amount of time and money has been invested in this property and the site is of minimal impact to the community in that there is minimal water usage and the dwellings represent an attractive addition to an aging neighborhood.

Surrounding Land Uses and Zoning

This site and the parcels located immediately north, south, east and west of the site are zoned R-1 and contain single family dwellings. There does not appear to be any recent land use activity in the immediate vicinity of the subject site.

APPLICABLE PLANS AND POLICIES:

Albuquerque/Bernalillo County Comprehensive Plan

The site is within the Semi Urban Area as designated in the Comprehensive Plan. The goal in the Comprehensive Plan is to "maintain the character and identify of semi urban areas, which have environmental, social or cultural conditions limiting urban land uses."

Land Use:

Policy a states that “development in the semi-urban area “shall be consistent with development limitations imposed by topography, soil conditions, groundwater quality, agricultural potential, flood potential, scenic qualities, recreation potential and existing development; the overall gross density shall be up to three dwelling units per acre.”

Policy b states “development in semi-urban areas shall include trail corridors, where appropriate, and shall be compatible with economic policies and historical and socio-cultural values, and shall maintain and integrate existing and new buildings and spaces of local significance into the community.”

Policy c states that

- “Mixed use areas should protect residential uses in the area, while offering a variety of local employment opportunities.”
- “Strip commercial development is discouraged in favor of clustered commercial development.”

Southwest Area Plan (SWAP)

The site is located in Residential Area Three of the Southwest Area Plan.

Policy 26 (g) allows a maximum residential density of up to three dwelling units per net acre when city sewer services are available.

Policy 9 states, “protect the fragile landforms and air quality in the plan area, new development or major modifications roads and other public facilities shall adapt to existing natural environment, topography, soils, vegetation, geology, and hydrology.

- f. Prohibit excessive cuts and fills that scar the natural landscape and create unstable soil and erosion conditions.

Policy 19 states “all development and subdivisions shall be required to limit the level of water runoff generated from new construction or paving in order to reduce velocity and volume of runoff, and to ensure the viability and capacity of down stream facilities.”

Policy 30 states, “standards for outdoor lighting shall be implemented to ensure that their use does not interfere with the night sky environment and unnecessarily adjacent properties.”

- a. Outdoor light poles within residential areas should not exceed sixteen (16) feet in height above existing grade; when mounted on buildings or structures, fixtures should not exceed twelve (12) feet from existing grade.
- b. Encourage landscaped areas within lots to break up large expanses of paved area and enhance pedestrian access.

Section 18 Special Use Permit Regulations

- A. By Special Use Permit after receipt of a recommendation from the County Planning Commission, the Board of County Commissioners may authorize the location of uses in any one in which they are not permitted by other sections of this ordinance; the Board of County Commissioners may likewise authorize the increase in height of buildings beyond the limits set fourth by sections of the zoning ordinance. With such permits, the Board of County Commissioners may impose limitations as it deems necessary:
1. To ensure that the degree of compatibility of property uses which this section is intended to promote and preserve shall be maintained with respect to the special use on the particular site and consideration of existing and potential uses of property within the zone and the general area in which the use is proposed to be located.
 2. To ensure the proper performance standards and conditions are, whenever necessary, imposed upon uses which are, or which reasonably may be expected to become, obnoxious, dangerous, offensive or injurious to the health, safety, or welfare of the public, or a portion thereof, by reason of the emission of noise, smoke, dust, fumes, vibration, odor, or other harmful or annoying substances;
 3. To preserve the utility, integrity and character of the zone in which the use will be located, without adversely affecting adjacent zones; and
 4. To ensure that the use will not be or become detrimental to the public interest, health, safety, convenience, or the general welfare.
 5. The County Planning Commission must review the Special Use Permit and progress of development from the date of approval and each year thereafter until completion of the plan, and if needed make a recommendation to the Board of County Commissioners to continue of revoke the Special Use Permit.

Section 19. Landscaping and Buffer Landscaping Regulations:

Where a nonresidential zone which is hereafter developed for a business purpose abuts a conforming residential use, special buffer landscaping is required to minimize noise, lighting and sight impact of the nonresidential activities in the residential area.

- A. Landscaping and buffer landscaping will be required in all zones for office, commercial, industrial, and multifamily residential uses; R-1, A-1, A-2 and M-H residential uses are exempt.
1. Sites of one acre or less:

- a. There shall be a landscaped setback along all streets of no less than ten feet.
 - b. There shall be a landscaped buffer of six feet between single-family residential uses and office, commercial, industrial, and multifamily residential uses.
 - c. Fifteen percent of all paved areas shall be landscaped. The landscaped setback may contribute toward this requirement.
 2. Sites one acre and up to five acres. There shall be a landscaped setback along all streets of not less than 15 feet. All other requirements are the same, as 1.b and 1.c above.
 3. Sites of five acres or more:
 - a. There shall be a landscaped setback along all streets of no less than 20 feet.
 - b. The landscaped setback shall not be counted toward the landscaping required as a result of paving.
 - c. All other requirements are the same as those required for sites of one acre or less.
- B. In a nonresidential zone, a solid wall or a solid fence at least six feet high shall be erected on sides abutting a single-family residential use, except for those sides abutting public right-of-way. However,
1. To allow for unobstructed vision, such wall or fence shall be three feet high in the area within 11 feet of a public pedestrian way or planned public pedestrian way location.
 2. If the wall or fence, plus retaining wall, would have an effective height of over eight feet on the residential side, the Zoning Administrator shall decide the acceptable height; such decision may be made by the same process and criteria required for a conditional use.
- C. Parking spaces within a parking lot shall be no more than 50 feet from a tree.

ANALYSIS:

Surrounding Land Use

This site and the parcels located immediately north, south, east and west of the site are zoned R-1 and contain single family dwellings. There does not appear to be any recent land use activity in the immediate vicinity of the subject site.

Plans

Albuquerque/Bernalillo County Comprehensive Plan

The site is located in the Semi Urban Area of the Albuquerque/Bernalillo County Comprehensive Plan. The principal Goal for the Semi Urban Area of the Comprehensive Plan is to “maintain the character and identify of semi urban areas, which have environmental, social or cultural conditions limiting urban land uses.”

Land use policy states that development in the semi-urban area is to be consistent with development limitations imposed by topography, soil conditions, groundwater quality, agricultural potential, flood potential, scenic qualities, recreation potential and existing development; the overall gross density shall be up to three dwelling units per acre. The location of the site that is proposed for the request is within the framework of a larger facility, which offers the public a range of social services. In this sense, this request is quite consistent with the surrounding community and land uses.

Southwest Area Plan (SWAP)

The site is located in Residential Area Three of the Southwest Area Plan, which allows a maximum residential density of three dwelling units per net acre when city sewer services are available. It appears that the proposed use conflicts with the residential density portion of the SWAP.

Zoning Ordinance

Section 10 is the R-2 zone which permits a higher density of population than in single family dwelling zones and still maintain a residential environment. Uses in this zone include apartments and multiple single family dwellings. Height Regulations state that structures may exceed 26 feet in height, but any portion of a structure which exceeds 26 feet in height may not exceed a plane drawn at a 45 degree angle from the horizontal from the ground level of land zoned A-1, A-2, R-1, or M-H, which is unimproved or is improved with a conforming permissive use.

Resolution 116-86 states the criteria for evaluating a requested zone change or Special Use Permit. The applicant must demonstrate that the existing zoning is inappropriate because of 1) an error in the original zone map; 2) changed neighborhood conditions which justifies a change in land use; or 3) that a different use category is more advantageous to the community as articulated in a County adopted plan. Based on the applicant's justification it does not appear that any of the above criteria has been sufficiently addressed.

Agency Comments

The Bernalillo County Building Department does not have any record of a building permit for this site. In addition, the Bernalillo County Public Works Division requires that a conceptual grading and drainage plan prepared by an engineer licensed in the State of New Mexico must be submitted and approved by the Bernalillo County Public Works prior to final approval of this application. Comments from the Zoning Administrator indicate that a review of the aerial maps

do not show this particular structure on the property as of 1974. Additionally, both existing structures do not meet applicable setback and separation requirements.

The City of Albuquerque Public Works Department and the Bernalillo County Office of Environmental Health state that the subject property has existing water account but no sewer account. Owners must hook to sewer system and pay UEC's and establish account.

Analysis Summary

Zoning	
Resolution 116-86	This request is in conflict with Resolution 116-86 in that there was not an error when the original zone map was created, and the requested land use change will not be advantageous to the surrounding area in that it conflicts with the Albuquerque/Bernalillo County Comprehensive Plan and the Southwest Area Plan.
Plans	
Comprehensive Plan	The site is located in the Semi urban Area of the Comprehensive Plan, which allows up to three dwelling units per acre. The provision of additional dwelling units in the form of apartments raises the density level well above the Comprehensive Plan criteria.
Area Plan	The site is located in Residential three Area of the Southwest Area Plan, which allows up to three dwelling units per acre. The provision of additional dwelling units in the form of apartments raises the density level well above the Southwest Area Plan criteria.
Other Requirements	
Public Works	The Bernalillo County Public Works Division requires that a conceptual grading and drainage plan prepared by an engineer licensed in the State of New Mexico must be submitted and approved by the Bernalillo County Public Works prior to final approval of this application.
Environmental Health and City Public Works	The City of Albuquerque Public Works Department and the Bernalillo County Office of Environmental Health state that the subject property has existing water account but no sewer account. Owners must hook to sewer system and pay UEC's and establish account
Building Department	The Bernalillo County Building Department does not have any record for a building permit for the apartments. Without an approved building permit for the subject site it is unclear if these dwellings meet the minimum standards for health,

	safety as fire protection as required by the Uniform Building Code.
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Conclusion

Based on Resolution 116-86 it does not appear that the proposed request meets the requirement of facilitating revitalization of the Comprehensive Plan and the Southwest Area Plan. The increase in residential density for this particular part of the South Valley is inconsistent with both the Comprehensive Plan and the Southwest Area Plan. This request is inconsistent with Resolution 116-86 in that the request does not demonstrate that health, safety and general welfare of the residents of the county are met since the subject apartments do not have the required building and zoning permits from Bernalillo County.

Additional Staff Comment: January 9, 2008

This case was continued from the April 4, 2007 hearing in order to allow the applicant time to resolve several items related to the request. The County Planning Commission directed the applicant to address the following issues:

1. Submit as-built drawings and specifications for the unpermitted structure. This submittal shall include two sets of plans (foundation, elevation, roof frame, wall section details, and other special construction details) and five site plans.
2. Provide a conceptual grading and drainage plan to the Public Works Division.
3. Submit a complete Special Use Permit application, include a response to Resolution 116-86, provide evidence that unique conditions exist that justify the request, and provide substantial neighborhood support.

To date, none of these items have been submitted for review.

RECOMMENDATION:

Denial of CSU 70009 based on the following Findings.

Enrico Gradi,
Program Planner

Findings:

1. This is a request for a Special Use Permit for a Specific Uses for an Apartment and a Single Family Dwelling Unit on Lot 35, Mervosh Addition, located at 2412 Mervosh Avenue SW, zoned R-1, and containing approximately .25 acres.
2. This request is a result of a zoning violation in that the property was being use for multi family dwellings without the proper zoning.
3. This request is in conflict with Resolution 116-86, in that the proposed land use category may be detrimental to the public interest, health, safety, and general welfare of the area because the applicant has not submitted building permits for the apartments located on the site.
4. This request is not consistent with Resolution 116-86 in that the applicant has failed to demonstrate that the existing zoning is inappropriate.
5. The request conflicts with Resolution 116-86 in that the Albuquerque/Bernalillo County Comprehensive Plan Policy a states that the overall gross density in the Semi Urban area shall be up to three dwelling units per acre.
6. The request conflicts with Resolution 116-86 in that the Southwest Area Plan Policy 26 (g) allows a maximum residential density of up to three dwelling units per net acre when city sewer services are available.
7. This request is inconsistent with the health, safety and general welfare of the residents of the County.

BERNALILLO COUNTY DEPARTMENT COMMENTS

Building Department:

No permits for conversion of existing apartments.

Environmental Health:

Provide proof of a lawful water and sewer account for all dwellings. There is in existence proof of only one water account attributed to this property. The distribution of the municipal water is not known.

No known sewer or septic tank permits for the main house and the numerous apartments exists either.

Provide proof of drinking water source and sewer/wastewater systems for all dwellings.

Zoning Manager:

Must comply with below listed comments.

Currently have zoning and building violations.

In 1998 applied for zone change and denied multiple dwellings units on one property. Buildings (Duplex) were used as apartments. Buildings were vacant until 2006. Owner was cited again for improper use as apartments in January of 2006.

Letters were sent out to abate violations, however owner did not reply. Currently in Metro Court on violations, however a continuance was given till May 2, 2007 while owner is applying for special use approval.

Note: Recommend violations be abated if approved, however there will be an issue on proper setbacks involving dwelling units on property. Should be addressed for proper variance approval.

Zoning Administrator:

Although this application indicates that construction of the "apartments" occurred during the early 1970's, a cursory review of the aerial maps do not show this particular structure on the property as of 1974. Additionally, both existing structures do not meet applicable setback and separation requirements.

Higher density, multi-family development standards require that landscaping, usable open space, and sufficient off-street parking be provided. These necessary improvements should be clarified for the project.

Fire:

Required access: Fire apparatus access roads shall be provided for every facility, building or portion of a building hereafter constructed or moved into or within the jurisdiction.

The required width of an apparatus access road shall not be obstructed in any manner, including parking of vehicles during construction and/or occupancy.

Must be able to provide fire protection for each existing unit and have smoke detectors per code

Public Works:

DRAN:

1. This property is subject to Chapter 38 of the Bernalillo County Code for Flood Damage Prevention and Storm Drainage. The site plan included with this Special Use permit application shows extensive development on this site. A conceptual grading and drainage plan prepared by an engineer licensed in the State of New Mexico must be submitted to, and approved by, Bernalillo County Public Works prior to final approval of this application. The conceptual grading and drainage plan must meet minimum design analysis and criteria.

2. A complete drainage plan and/or report, approved by Bernalillo County Public Works, will be required prior to any additional development.

DRE:

1. The edge of public right-of-way (ROW) and ROW width must be shown on the site plan. No existing or proposed infrastructure is allowed within the ROW that is not permitted within the setback area.

Parks & Recreation:

No comment

Sheriff's:

No comment

COMMENTS FROM OTHER AGENCIES

MRGCOG:

No adverse comment

COUNTY PLANNING COMMISSION
JANUARY 9, 2008
CSU 70009

AMAFCA:

No comment.

PNM:

It is the applicant's obligation to determine and accommodate existing utility easements that cross the property, to dedicate utility easements, and to abide by any conditions or terms of such easements.

City Public Works:

Property has existing water account but no sewer account. Owners must hook to sewer system and pay UEC's and establish account

Water Resources Section

No comment

City Open Space:

No adverse comments.

City Transportation:

No adverse comments

Transportation Division:

City Transit:

No adverse comment

NM Department of Transportation

No adverse comment

NEIGHBORHOOD ASSOCIATIONS:

South Valley Coalition of Neighborhood Associations
South Valley Alliance